

1903-001 Chancery Causes: J. H. Caldwell & vs. Elijah Pruitt
Lee Co.

Dulaney, Emmert, Pennington, Orr

- Deed

CA - Contract Dispute
T - Property

To the Hon. H. A. W. Skeen, Judge of the Circuit Court
for Lee County:

Humbly complaining, your orators, J. H. Caldwell, B. L.
Dulaney and W. B. Emmert, would respectfully represent unto your
Honor as follows:

On the 20th day of December, 1902, and prior thereto, one
Elijah Pruitt was seised and possessed in fee-simple of a certain
tract or parcel of land in the County of Lee in the State of
Virginia, on the head waters of Bailey's Trace Branch, in what is
known as the Pocket Country, and being the same land which was
conveyed to the said Pruitt by two deeds, to-wit: A deed from
A. M. Goins, Commissioner, dated April 3, 1888, and recorded in
the County Clerk's office for the County aforesaid, in Deed Book
No. 30, Page 338, and a deed from G. W. Russell, Charles Garrison,
Susan Garrison and Mary J. Zion, dated February 25, 1888, and re-
corded in the said Clerk's office in Deed Book No. 30, Page 335.
Certified copies of said deeds are filed herewith as part hereof,
marked respectively Exhibits "A" and "B". While the said Pruitt
was so seised and possessed of said tract of land, to-wit, on the
20th day of December, 1902, he entered into a written contract
with your orators whereby he sold and agreed to convey, with cove-
nants of general warranty and other usual covenants of title, to
your orators, at the price of \$5.00 per acre, \$100.00 of which was
paid in cash and the residue of which was to be paid pursuant to
the terms of said contract, as soon after the date thereof as a
survey of the land could be made by a competent surveyor employed
by your orators, and within two months next after said last named
date, all coal, oil, minerals, gases, stone, and timber 22 inches
and below in diameter, in, on and under the above mentioned land,
together with all proper and necessary rights of ingress and egress

in, on and over the said lands, for the purpose of mining the coal, oils, gases and minerals aforesaid. The said contract was duly acknowledged, and was duly recorded in the office of the Clerk of the County Court aforesaid, on the 24th day of December, 1902, in Deed Book 39, Page 456, and a duly certified copy thereof is filed herewith as a part of this bill marked Exhibit "C". There was excepted out of said contract one acre around the graveyard on the said land.

Your orators now show unto your Honor that on the ____ day of January, 1903, and within two months next after the date of said contract, they sent one W. E. Thompson, a practical and competent surveyor in their employment, to the said land for the purpose of having him survey and ascertain the acreage thereof, but the said Pruitt refused to permit the said Thompson to survey the said land, and, on the contrary, forbade him going upon the same for that purpose. Thereafter, to-wit, on the 18th day of February, 1903, your complainants tendered to the said Pruitt ^(\$100.00 having already been paid) \$1535.00 in lawful money of the United States, the said Pruitt claiming that he had 327 acres in the aforesaid tract of land, and complainants being anxious, ~~ready and able~~ to do anything and everything in their power to comply with the aforesaid contract on their part, but the said Pruitt refused and declined to accept same, and declined to make to your complainants a deed for the interest in said land sold to them under said contract, and, in declining to accept the same and to make a deed, said Pruitt stated that he would not carry out his said contract or make to your complainants a deed to the interest which they had bought from him, as aforesaid, unless compelled to do so by law.

Your orators will further show that in a very few days after they had made said contract with said Pruitt, they were in-

formed that he was dissatisfied with the same, and would refuse to comply therewith unless compelled by law to do so, but before seeing the said Pruitt further in regard to the matter, they were also informed that one J. C. Noel, an attorney at law, had been retained by the said Pruitt to advise and represent him in all matters relating to said contract, and thereupon and thereafter they conferred with the said Noel almost exclusively, having very little further conversation with the said Pruitt in regard thereto, and on various occasions and at various times the said Noel stated to complainants or to their representatives that he was trying to effect a compromise which he thought would be satisfactory to all parties, and for this reason matters rested until a short time prior to the institution of this suit, when the said Noel informed E. W. Pennington of counsel for complainants, that he would not ask for further time to effect a settlement without a suit, and that complainants were at liberty to take such action as they thought proper in the premises. These negotiations with the said Noel are referred to in explanation of their reason for not bringing this suit at a somewhat earlier date.

At the time of the said contract of December 20th, 1902, the said Pruitt informed your complainants that in August, 1901, he had made some sort of a contract with C. and C. D. Slemph with respect to his said land. This fact was previously known to your orators, and on the day on which said contract was made and signed, the said Pruitt expressed a fear that if he made a contract with your orators, the said Slemphs might bring some sort of action or suit against him upon their contract, but your orators had theretofore reached an understanding with the said Slemphs to the effect that if your orators could buy said Pruitt's land or make any contract with him concerning the same, they, the said Slemphs, would never assert their rights, if any they had under

their contract of August, 1901. Consequently, your complainants were in a position to guarantee the said Pruitt that the said Slemms would not institute any proceedings against him by reason of his said contract with the said Slemms; and your complainants here allege that the said Slemms will not, nor will either of them, ever institute any suit or proceedings upon their said contract with the said Pruitt, and that said Slemms have given them a lawful and binding obligation against any such proceedings.

Your orators would further show that they are now and have at all times since the 20th day of December, 1902, been ready, able, willing and anxious to comply with the said contract on their part and to pay to the said Pruitt the residue of the purchase price of said coal, oils, minerals, gases, stones, timbers, and rights of ingress and egress.

Complainants are ready and willing and able, and here offer, to pay into Court any sum which they may be directed to pay on account of said purchase price.

The premises considered, the prayer of your orators is that said Elijah Pruitt be made a party defendant to this bill and required to answer the same, but he need not do so under oath, as that is expressly waived; that the said Elijah Pruitt be required, on his part, to specifically execute and perform in all respects the said contract of December 20th, 1902; that the said Thompson or some other competent surveyor be allowed and directed under the order and protection of this Court, to go upon the said lands, pursuant to the terms of said contract, and survey and ascertain the acreage thereof; that the said Pruitt be required to make to your orators a deed, in compliance with said contract,

with the covenants of title provided for therein, upon payment to him or to the Clerk of this Court, for his benefit, of the residue of the purchase price of said interest in said lands, the said residue of purchase price to be determined upon the survey herein prayed for; that, in the event of the said Pruitt's further refusal to make such deed, ~~that~~ the same be made by a commissioner appointed by this Court, and your orators pray for all such further and general relief as their case merits in a Court of Equity, and they will ever pray, &c.

(Signed)

John H. Caldwell,

B. L. Dulaney,

W. B. Emmert,

By Counsel.

Purington Bros
Bullitt & Kelly
attorneys

J. H. Caldwell

to { Bill in ch

Elijah Pruitt

The depositions of E. W. Pennington, W. B. Emmert, W. T. Orr and others, taken in the office of Bullitt & Kelly in Bristol, Virginia, on the 17th day of September, 1903, pursuant to notice hereto attached, to be read as evidence on behalf of complainants in a certain suit in equity now pending in the Circuit Court of Lee County, Virginia, wherein John H. Caldwell, B. L. Dulaney and W. B. Emmert are complainants and Elijah Pruitt is defendant.

Present, Bullitt & Kelly, counsel for complainant. No counsel present for defendant.

No witness appearing on this date, the taking of these depositions is adjourned until the 28th day of September, 1903, at the office of Bullitt & Kelly in Bristol, Virginia, aforesaid.

This 17th day of September, 1903.

Mary B. Summers
Notary Public.

Met pursuant to adjournment in the office of Bullitt & Kelly in the City of Bristol, Virginia, on the 28th day of September, 1903. Present, Judge E. W. Pennington and Bullitt & Kelly, counsel for complainant, and Judge C. T. Duncan and Mr. L. T. Hyatt, counsel for defendant.

By agreement of counsel the taking of these depositions is further adjourned until tomorrow morning, the 29th inst., at the same place.

Mary B. Summers,
Notary Public.

Met pursuant to adjournment in the office of Bullitt & Kelly, on the 29th day of September, 1903, in Bristol, Virginia. Present, Judge E. W. Pennington and Bullitt & Kelly, counsel for complainant, and Judge C. T. Duncan and L. T. Hyatt, counsel for defendant.

W. B. Emmert, a witness of lawful age, being duly sworn, deposes as follows:

Q 1 Please state whether you are a member of the firm of Caldwell & Dulaney and one of the complainants in this case.

A I am.

Q 2 I show you an original contract dated December 20, 1902, signed by Elijah Pruitt, copy of which is filed with the bill in this case. Please state whether or not you were present when said contract was executed.

A I was.

Q 3 Did the said Elijah Pruitt sign and acknowledge the same in your presence?

A He did.

Q 4 Has he complied with the same on his part?

A He has not.

Q 5 Please state whether or not J. H. Caldwell, B. L. Dulaney

and yourself have attempted to comply with the same on your part.

A We have.

(The answers to the foregoing questions are objected to because it is simply an expression of the witness's opinion without telling any fact or any act done by either of the parties towards the compliance on their part with the contract).

Q 6 Please state what you and the said Caldwell and Dulaney have done in an attempt to comply with said contract on your part.

A We sent surveyors to make a survey in accordance with the contract, and we went to Pruitt's house on February 18th, 1903, and made a tender of the purchase price of the land in accordance with the contract.

Q 7 State whether or not the said Pruitt was willing or would permit the survey to be made, and whether or not he would accept the purchase money which you tendered.

A The surveyor reported that Pruitt would not allow him to go on the land at all and positively refused to allow a survey to be made. Pruitt would not accept the money. He refused to accept the money and deliver a deed.

(So much of the foregoing answer as undertakes to state what the witness was informed by the surveyor is objected to because hearsay).

Q 8 Please state whether or not you had a written notice served on the said Pruitt, bearing date on the 18th day of February, 1903, and if you have the original of said notice, please file the same with your deposition, marked Exhibit A.

A Yes, a written notice was served on Pruitt on February 18th, 1903, and the original of same, with the officer's return of service thereon, is herewith filed, marked as requested.

Q 9 Please state what amount you tendered the said Pruitt, and how you arrived at the sum which you did tender.

A We tendered Pruitt \$1535.00, the same being the balance of the purchase price based on his estimated acreage, in accordance with the contract. The total amount would have been \$1635.00, and we paid him \$100.00 on signing the contract.

Q 10 Was your attempt to make the survey as provided for in the contract made within the time limit mentioned in the contract?

A Yes. I am unable to state the exact date, but it was within the time limit. We attempted to make the survey prior to the tender of the money.

Q 11 Please file with your deposition the original contract about which you have heretofore testified, marking the same Exhibit B.

A I file the same marked as requested.

Q 12 I see that the notice which you have heretofore filed with your deposition^{is}, dated on the 18th of February, 1903. This suit was not instituted until some months later. How do you account for the delay?

A Negotiations looking to the compromise delayed the filing of the suit.

Q 13 Was this suit instituted with reasonable promptness after the compromise negotiations failed?

A Yes. In fact, while the compromise negotiations were still on.

Q 14 In the bill of complaint some reference is made to the contract with C. and C. B. Slomp of the one part and the said

Pruitt of the other part, and the statement is made in the bill that the said Slemps have given the complainants an obligation binding themselves not to institute any legal proceedings on said contract against the said Pruitt. State whether or not you have any such obligation signed by the Slemps, and if so, file it with your deposition.

A Yes, we have. The same is filed herewith marked Exhibit C.

Q 15 Please state whether or not the said complainants are now and have been at all times since the execution of the said contract of December 20th, 1902, ready, willing, able and anxious to comply with the same on their part.

A They are, and have been all the time since the contract was made.

Q 16 State whether or not the said complainants are prepared and ready to pay into Court the purchase price provided for in said contract if so ordered by the Court.

A They are.

CROSS-EXAMINATION.

Q 1 You filed with your deposition and as part thereof a paper signed by C. Slomp and C. B. Slomp by which they agreed with yourself and J. H. Caldwell and B. L. Dulaney that they would not at any time institute any legal or equitable proceedings against Elijah Pruitt for the enforcement of a breach of the contract dated August 26th, 1901, between themselves and Vincent Boring and the said Elijah Pruitt. Will you please state the date when you received said agreement from the said Slemps.

A The said agreement was handed to me on yesterday by our

counsel.

Q 2 Which one of your counsel?

A Judge E. W. Pennington.

Q 3 Did you ever have any agreement executed by Vincent Boring of like character with the one signed by the two Slemms?

A No sir, we have not.

Q 4 Do you know whether the said Vincent Boring is now alive or dead?

A I am informed that he is dead.

Q 5 Have you, or has any of your Company or attorneys, possession of the contract dated August 26th, 1901, between Pruitt, the Slemms and Boring?

A I think the original contract is in our possession; can't state positively.

Q 6 Will you please file a copy of said contract with your deposition, marking the same for identification, "Defendant's Exhibit No. 1."

A We will do so if we have the contract.

Q 7 You state that on the 18th day of February, 1903, you tendered to Elijah Pruitt \$1535.00, the balance regarded as due on the contract with said Pruitt dated on the 20th of December, 1902. Please state how you made that tender.

A We made the tender by offering him currency.

Q 8 Did you count that currency out to him in his presence?

A I laid it out before him in three five hundred dollar packages and one thirty-five dollar package.

Q 9 Now please state what kind of currency you tendered.

A United States currency.

Q 10 Just state what kind it was. Was it National Bank notes, legal tender notes, silver certificates, gold certificates, and so forth and so on?

A There was a number of gold certificates among it, and it was currency delivered to me on the same day by the Pennington Gap Bank. I didn't look through it to see whether it was bank notes or treasury notes.

Q 1 Where is that \$1535.00 now?

A I don't remember what was done with the identical money offered to Mr. Pruitt. It was probably returned to the Bank.

Q 12 And you don't know where it is now?

A And I don't know where it is now.

Q 13 I see in the contract of December 20th, 1902, with Mr. Pruitt, this clause, "And whereas in August, 1901, the said first parties signed some kind of a contract with C. & C. B. Slemp concerning said land: Now said second parties agree to guarantee and does hereby guarantee that said Slemps, or either of them, shall in no wise institute any proceedings against the said Pruitt by reason of said contract." Now at the time you tendered the money as stated by you above, and demanded a deed from Mr. Pruitt, what kind of guarantee did you give him against any proceedings by the Slemps?

(Question objected to because the contract itself is the guarantee).

Q 14 At the time you tendered the money as stated above by you, did you present to Mr. Pruitt any deed for his execution? If so, please file said deed as part of your deposition, marked, "Defendant's Exhibit No. 2."

A We did not.

Q 15 Did you have a deed prepared for that purpose in case Mr. Elijah Pruitt should accept the money?

(Question objected to because it was the duty of the said Pruitt to have the deed ready to tender to the complainants).

A I am not entirely clear as to whether I had such a deed with me or not, but I do not think I had.

Q 16 If you did have such a deed, did it contain a clause guaranteeing Pruitt against any suit by the said Slemms on account of the contract made by Pruitt with them, dated in August, 1901?

(This question is also objected to because it was the duty of the said Pruitt to have a proper deed ready for execution upon a proper tender of the purchase money).

Q 17 Have you ever prepared and offered to Mr. Pruitt any paper containing a guarantee against any suit, legal or equitable, which the said Slemms might hereafter institute against Pruitt on account of said contract of August, 1901?

A We have not.

Q 18 Was it not a part of the terms of the contract between the Slemms, Boring and Pruitt that Mr. Pruitt was to have \$15.00 per acre for his land if sold, and as much above that price as Mr. Slemm should sell the same for?

A I don't know that I ever read the contract between the Slemms and Pruitt, but my understanding of the contract was that it was an option on Pruitt's land at \$15.00 per acre.

Q 19 Did not your Company or firm agree to take up that land of Mr. Pruitt's, along with other lands on which the Slemms and Boring had similar contracts, at the price of \$16.00 per acre?

(Objected to because if the complainants did so agree, they made a separate and independent contract upon which this

suit is instituted, and the said Pruitt having made a new contract, we think he is thereby bound. The contract we refer to is the contract sued upon.)

A Our firm had agreed with C. Slomp to take up such lands in the district in which the Pruitt land is located as the firm might want and which was under Slomp's control. The price in fee of these purchases was to be \$16.00 per acre, and there was an understanding that where the mineral right only was purchased, the price was to be agreed upon.

Q 20 Was that contract in writing? If so, please file the same or a copy thereof as part of your deposition, marked, "Defendant's Exhibit No. 3."

(Question objected to because the witness has already stated the substance of the contract so far as it can be material to this suit.)

A The contract is part in writing, and a part of our business with Slomp was carried on under verbal understanding. The contract mentioned, as I remember, covers other matters, and we will submit same to our counsel, and will file it in Court if the Court so orders. The maximum price for lands in fee was \$16.00 per acre, and this price was offered by us to Pruitt on the day he sold us his mineral rights, as mentioned in the contract dated December 20th, 1902. He declined to accept the \$16.00 per acre for his land in fee-simple, and stated that he was not bound by the contract held by Slomp.

Q 21 Didn't Mr. Pruitt state at that time as the reason why he would not accept that price and convey the land to you that he was afraid the Slomps would sue him if he did so?

A Mr. Pruitt expressed fear of litigation with Slemph. He assigned several reasons for not wanting to sell his surface, but I do not think he mentioned the Slemph contract as a reason.

Q 22 What is the character of the surface of that tract of land?

(Question objected to because immaterial).

A I have never made an examination of the surface.

Q 23 Isn't it very steep and rough.

(Same objection as last above).

A I understand it is very steep and rough.

RE-EXAMINATION.

Q 1 Please state whether or not the said Elijah Pruitt, at the time you made the tender above mentioned, refused to accept the money or rejected the tender on account of the character of the currency or coin which you offered him; that is to say, did he assign as a reason for not accepting the tender that you did not offer him legal tender?

A No, he did not.

(The foregoing question and answer thereto is objected to because, unless the money offered was legal tender, he had to give no reason for not accepting it.)

Q 2 State whether or not you have, at all times since the said tender, been able to make the payment and ready to do so.

A We have, at any and all times.

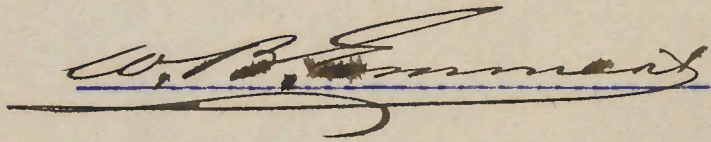
Q 3 Have you had the money in hand for this purpose?

A We have.

Q 4 State whether or not the said Pruitt asked you to give him any other guarantee than such as is given in the contract itself, or object to giving you a deed because of any failure on your part to give him a guarantee against the said Slemp contract.

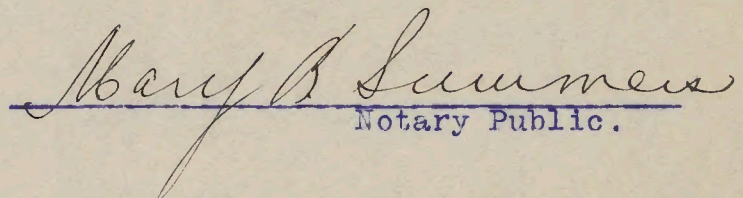
A No, he did not ask for further guarantee, and made no reference to the Slemp contract.

And further this deponent sayeth not.

A handwritten signature in dark ink, appearing to read "W. B. Summers", is written over a horizontal blue line. The signature is fluid and cursive.

By agreement of counsel for all parties the further taking of these depositions is adjourned until the 14th day of October, 1903, at the office of Bullitt & Kelly, in Bristol, Virginia.

This 29th day of September, 1903.

A handwritten signature in dark ink, appearing to read "Mary B. Summers", is written over a horizontal blue line. The signature is fluid and cursive.

Notary Public.

Bristol, Virginia, Oct. 14, 1903.

Office of Bullitt & Kelly:

No witness appearing these depositions are closed.

Mary B. Summers
Notary Public.

Virginia, City of Bristol, To-wit:

I, Mary B. Summers, a Notary Public in and for the City of Bristol in the State of Virginia, do certify that the foregoing deposition of W. B. Emmert was taken, sworn to and subscribed before me at the time and place and for the purpose set forth in the caption hereto.

Witness my hand this 14th day of October, 1903:

Mary B. Summers
Notary Public.

Notary's Fee: \$3.00.

J. H. Caldwell
Depositions

Elijah Pruitt

Received by mail in
good condition and filed
December 8th 1903.

A. B. Murray Clerk

THIS CONTRACT made and entered into this the 20th day of December 1902, by Elijah Pruitt of Lee County, Virginia, party of the first and J. H. Caldwell, B. L. Dulaney and W. B. Emmert parties of the second part, and of Bristol Tenn.

Witnesseth; that for and in consideration of the sum of Five dollars per acre, to be paid as follows to-wit; One hundred dollars in hand paid, the receipt whereof is hereby acknowledged, and the residue to be paid, as soon as a survey can be made of the lands hereinafter described, and which said second party agree to employ a competent surveyor to do the surveying, of the lands hereinafter described, within two months from this date, the said party of the first part, doth hereby sell and agree to convey with covenants of general warranty all coal, oil, minerals, gases and stone and timber standing thereon of twenty two inches and below in diameter together with all proper and necessary right of ingress and egress in, on and over said land for the purpose of mining the coals, oils, gases and minerals on the land following land to-wit; That tract of land lying and being in Lee County Virginia, in the Pockett Country and being the same land on which the said first parties now live and being the same land which was conveyed to said first party by A. M. Goins Comr. and G. W. Russell, Chas. Garrison and Susan Garrison and Mary J. Zion and the two deeds recorded in ~~the~~ D. B. No. 30 page 338 and No. 30 page 335, and to which deeds reference is here made for a more particular description of said land.

And on the tender of the residue of the purchase price of said purchase price of said oil gases, minerals coals, rights of way for ingress and egress and timber herein sold on in and over said land the said Pruitt binds himself to make acknowledge and deliver to said second party their heirs or assigns a deed to the same with the usual covenants of warranty and with covenants of general warranty. But out of said tract of land there is to be excepted from the conveyance 1 acre of land around the grave yard on said land. And whereas in August 1901, the said first party signed some kind of a contract with C. & C. B. Slomp conveying said land; Now said second party agrees to guarantee and does hereby guarantee that said Slomps or either of them shall in no wise institute^t any proceeding against said Pruitt by reason of said

contract. Witness the following signature & Seal.

Witness
E. W. Pennington.

his
Elijah x Pruitt (Seal)
mark

Virginia, Lee County to-wit;

I, W. T. Orr a Justice of the Peace in and for the County of Lee and State of Virginia, do hereby certify that Elijah Pruitt whose name is signed to the foregoing writing dated the 20th day of December 1902, has acknowledged the same before me in my County aforesaid. Given under my hand this the 20th day of December 1902.

W. T. Orr J. P.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County, the 24th day of December 1902. The foregoing contract was presented, and together with the certificate of acknowledgment thereto annexed, admitted to record.

Teste; B. M. Morgan, Clerk.

A Copy, Teste; B. M. Morgan-----Clerk.
(D. B. No. 39 page 456 &c)

Elijah Pruitt
with } Contract
J. H. Caldwell itals

Copy

Clerk .50 cts

THIS DEED made this the 3rd day of April 1888, by A. M. Goins, Commissioner of the first part, and Elijah Pruitt of the second part;

Whereas on the ---day of April 1888, it was decreed by the Circuit Court of Lee County Va., in a certain cause then depending on the chancery side of said Court between C. A. Jessee and Elijah Pruitt Complts. and Emmet H., Doris I., and Rando L. Russell defendants, that A. M. Goins who was thereby appointed a Commissioner for the purpose, should before the adjournment of said Court at its April Term 1888, convey to said Elijah Pruitt one moiety of the lands by meets and bounds as set out by exhibit "C", of said cause and a vendors lien be reserved in favor of said infant defendants for Sixty dollars and fifty cents until the same may be paid to their lawful guardian; Now this Indenture Witnesseth, that the said A. M. Goins, Commissioner as aforesaid, in order to carry into effect the said decretal order in consideration of the premises and of the sum of \$5.00 in hand paid doth give, grant, bargain, sell and convey unto the said Elijah Pruitt his heirs and assigns forever whatever right, title and interest the said infant defendants may have in and to said tract of land, the said tract of land is situate in Lee County Va., on the waters of Baileys Trace and was on the 25th day of February 1888, conveyed to said Pruitt by Chas. and Susan Garrison, G. W. Russell and Mary J. Zion to which deed reference is here~~in~~made for a more particular description of the same.

And said A. M. Goins, commissioner as aforesaid will forever warrant and defend the title to said land against himself his heirs, and all persons claiming by, through or under him.

Witness my hand and seal, this the day and year first above written.

A. M. Goins (Seal)

Virginia, Lee County to-wit;

This day A. M. Goins personally appeared before me in my County aforesaid and acknowledged the above writing bearing date April 3rd 1888, to be his deed. Given under my hand this the 3rd April 1888.

John R. Gibson Clerk.

Virginia, Lee County to-wit;

In the Office of the Clerk of said County, the 10th day of August 1894, this deed was presented and together with the certificate thereto annexed

admitted to record.

Teste; S. V. F. Richmond, Clerk.

A Copy, . Teste; ~~B. H. Morgan~~-----Clerk.
(D. B. 30 page 338)

A. M. Gorins Comr.
To / Deed

Elijah Pruitt

Copy
=

Clerk 50 cts.

THIS DEED, made this 5th day of October, 1903, by and between Elijah Pruitt, widower, party of the first part, and John H. Caldwell, B. L. Dulaney and W. B. Emmert, partners trading under the firm name of Caldwell & Dulaney, parties of the second part,

W I T N E S S E T H:

That for and in consideration of the sum of Forty-eight Hundred Dollars (\$4800.00) paid and to be paid as follows, to-wit: Sixteen Hundred Dollars (\$1600.00) cash in hand, the receipt of which is hereby acknowledged; Sixteen Hundred Dollars (\$1600.00) to be paid on or before the 5th day of April, 1904; and Sixteen Hundred Dollars (\$1600.00) to be paid on or before the 5th day of October, 1904, both of said deferred installments of purchase money bearing interest from the date hereof, and being represented by two notes of the parties of the second part payable to the party of the first part, and to secure which a vendor's lien is hereby retained upon the premises hereby conveyed, the said party of the first part doth hereby grant, bargain, sell and convey unto the said parties of the second part all that certain tract or parcel of land situate on the head waters of Bailey's Trace in the Pocket Country in Lee County, Virginia, supposed to contain about three hundred (300) acres, and being the same land which was conveyed to the said Pruitt by two deeds, to-wit: a deed from A. M. Goins, Commissioner, dated April 3rd, 1888, and recorded in the office of the Clerk of the County Court of Lee County aforesaid, in Deed Book 30, Page 338, and a deed from G. W. Russell, Charles Garrison, Susan Garrison and Mary J. Zion, dated February 25th, 1888, and recorded in the Clerk's office aforesaid, in Deed Book 30, Page 335, and being also the same land described in a certain contract in writing, dated December

20th, 1902, between the said Elijah Pruitt of the one part and John H. Caldwell, B. L. Dulaney and W. B. Emmert of the other part, and recorded in the Clerk's office aforesaid, in Deed Book 39, Page 456, to which deeds and contract, of record as aforesaid, reference is here made for such description of said land as is therein contained.

This is a sale by the acre, the price agreed upon being Sixteen Dollars (\$16.00) per acre. The acreage is to be ascertained by a survey by a competent surveyor employed by and at the expense of the second parties hereto, said survey to be completed before the maturity of the first deferred installment of purchase money hereinbefore mentioned. If the said tract of land shall be shown by said survey to contain more than three hundred acres, the parties of the second part are to pay the party of the first part for the difference between the said three hundred acres and the actual acreage ascertained by such survey at the rate of Sixteen Dollars (\$16.00) per acre, such additional payment to be made at the time of the maturity of the first deferred installment of purchase money; and if the actual acreage shall be ascertained by such survey to be less than three hundred acres, then the note representing said first deferred installment shall be credited with the difference in acreage thus ascertained at the rate of Sixteen Dollars (\$16.00) per acre.

There being a small graveyard upon said land, the said second parties agree in accepting this deed that they, their heirs or assigns, will at no time mine or use the ground on which such graveyard is in such manner as to disturb the remains of any person buried thereon.

The said party of the first part shall have the right to use any of said lands on which he now has any growing crops un-

til the same is matured, and for a reasonable time thereafter for the purpose of removing such crop therefrom.

And the said party of the first part doth hereby covenant with the said parties of the second part that he is seised in fee-simple of the aforesaid tract or parcel of land, and has good right and lawful power to convey the same as herein; that the parties of the second part, their heirs and assigns, shall have quiet possession of the premises hereby conveyed; that said premises are free from all encumbrances; that he will warrant generally the title thereto, and will execute such further assurances of the title as may be reasonably requisite.

Witness the following signature and seal:

Elijah ^{his} Pruitt (SEAL)
_{mark}

VIRGINIA, LEE COUNTY, TO-WIT:

I, L. T. Hyatt, a Commissioner in Chancery for
the Circuit Court in and for the County of Lee and State of Virginia, do hereby certify that Elijah Pruitt, whose name is signed to the above deed bearing date on the 5th day of October, 1903, has acknowledged the same before me in my County and State aforesaid.

Given under my hand this 5th day of October, 1903.

L. T. Hyatt, Comm. in Chy.

My commission expires:

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County the 8th day of October 1903. This deed was presented, and together with the certificate of acknowledgment thereto annexed, admitted to record.

Teste; Henry J. Morgan Deputy Clerk.

B. L. Dulaney et al
From { Deed
Elijah Pruitt

Recorded in Deed
Book No. 40 page 55-9

Examined Oct 8 1903.
Indeud

tax 4.80
Clerk 1.25-
\$6.05-

#111
To Elijah Pruitt:

Having offered to make the survey provided for in your contract with us, dated on the 20th day of December, 1902, and having been forbidden by you to make the said survey, and having today tendered you the balance of the purchase money, as nearly as we can estimate it without said survey, and the same having been refused by you, and you having refused to make it, or otherwise comply with your contract with us as aforesaid, we hereby notify you that we are ready, able and anxious to comply with said contract on our part, have been ready, able and anxious to do so ever since the execution thereof, and that we will expect and require the specific performance thereof on your part, and will promptly institute legal proceedings for this purpose.

Respectfully,

CALDWELL & DULANEY,

By W. B. Emmert

This 18th day of February, 1903.

Virginia, Lee County, to-wit:-

I, J. K. Parsons, a constable of said county and State do hereby certify, that on the 18th., day of February, 1905, I delivered to Elijah Pruitt a true and exact copy of the notice or writing on the reverse side hereof. Given under my hand this the 18th., day of Feb., 1905.

J. K. Parsons

C. L. Co., Va.

Exhibit A., filed
with the deposition
of W. B. Emmert
in case of John H
Coldwell et al. vs Elijah
Pruitt.

Mary B. Summers,
W. P.

E.W. PENNINGTON.

ROBT. L. PENNINGTON.

Pennington Bros.
ATTORNEYS AT LAW,
JONESVILLE AND PENNINGTON GAR. VA.

The undersigned, C. Slemp, and C.B. Slemp, in consideration of the sum of One Dollar and other valuable considerations, the receipt of which is hereby acknowledged, do and each of them doth hereby agree with J.H. Cladwell, B. L. Dulaney and W. B. Emmert, their heirs, personal representatives and assigns that they will not at any time institute any legal or equitable proceedings against Elijah Pruitt for the enforcement of or breach of the contract dated August, 26th, 1901, between them and Vincent Boring of the one part, and Elijah Pruitt and others of the other part, and agree that they will not at any time assert any rights or claims under said contract against the said Elijah Pruitt, or against any one claiming by, through or under them by reason of said contract dated as aforesaid.

Witness the following signatures and seals.

C. Slemp (Seal).

C.B. Slemp (Seal).

Witness:

Exhibit C. Filed
with the deposition
of W. B. Emmet
in case of John H.
Caldwell et al
vs. Elijah Pruitt.
M. B. S.
W. P.

IN THE CIRCUIT COURT OF LEE COUNTY, VIRGINIA:

JOHN H. CALDWELL,	)	
B. L. DULANEY,	)	
and W. B. EMMERT, PLAINTIFFS,	)	
VS.	)	LIS PENDENS.
ELIJAH PRUITT, DEFENDANT.	)	

The object of the above suit which is now pending in the above styled Court between the above parties is to obtain a specific execution on the part of the said Elijah Pruitt of a contract of sale dated December 20th, 1902, and recorded in the Clerk's office of the County Court of Lee County, in Deed Book 39, Page 456, whereby the said Pruitt sold and agreed to convey to the said plaintiffs, all the coal, oil, minerals, gases and stone and timber of 22 inches and below in diameter, together with all proper and necessary rights of ingress and egress in, on and over a certain tract or parcel of land situated on the head waters of Bailey's Trace Branch, in what is known as the Pocket Country, in Lee County, Virginia, and being the same land which was conveyed to the said Pruitt by two deeds, to-wit, a deed from A. M. Goins, Commissioner, dated April 3rd, 1888, and recorded in the Clerk's office aforesaid, in Deed Book 30, Page 338, and a deed from G. W. Russell, Charles Garrison, Susan Garrison and Mary J. Zion, dated February 25th, 1888, and recorded in said Clerk's office, in Deed Book 30, Page 335, to which contract and deeds of record as aforesaid reference is here made.

The estate of the said Elijah Pruitt is intended to be affected hereby.

Respectfully,

J. H. Caldwell,
B. L. Dulaney,
W. B. Emmert,
By Counsel.

J. H. Baldwin et al.

vs. { Rice & Co.

Elizabeth Smith
